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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,621	10/30/2003	Charles Brewer	410-1-014	9892

7590 04/27/2005

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/698,621

**Applicant(s)**

BREWER ET AL.

**Examiner**

Susan C. Alimenti

**Art Unit**

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: it appears the word “an” in line 4 should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-4, 18, 19, 20, 22, and 24 are rejected under 35 U.S.C. 102(a) as being anticipated by Wood (US 2004/0194724 A1).

Wood discloses the claimed invention comprising a lower frame 1, a fabric 13 attached to the lower frame 1 to form a pet supporting floor, a rigid upper frame 7 co-operable with frame 1 and a cover 18 that fits removeably over frame 7 to form an enclosure over the pet supporting floor 13.

Regarding claim 2, the lower frame 1 rests on a supporting surface, i.e. the ground or floor, and pet supporting floor 13 is spaced above said ground or floor.

Regarding claims 3, 4 and 22, floor 13 is made of a mesh material (Wood, [0020-0024]) that is considered to be an air permeable fabric.

Regarding claims 18 and 19, lower frame 1 is rectangular, made of hollow tubes, and includes four removable legs 11 (Wood, [0035-0036]).

Regarding claim 20, the edge created by the upper portion of feet 11, is considered to be a means for staking the device to a support surface.

Finally regarding claim 24, fastener portions 17a, 17b mate with fastener portions 20a, 20b attached to cover 18 to secure the cover 18 to the pet house (Wood, [0038]).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-13, and 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Wood as described above.

Regarding claims 5 and 12, Wood discloses the claimed invention except he does not specify that PVC is used to construct the floor 13, and that nylon is used to construct the cover 18, he however does note that a preferred material would be that of a plastic or synthetic type (Wood, [0021-0026]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic/synthetic materials such as PVC or nylon since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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6. Claims 14, 15, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood as applied to claims 5-13, and 23 above, and further in view of Foster.

Wood discloses the claimed invention except the opening 21 does not have a flap, and further there is not an additional vent area with a corresponding flap. Foster discloses an animal shelter in the same field of endeavor, i.e. flexible animal housings, that utilizes flap 44 to cover ingress opening 12, and further teaches the addition of a ventilation panel 50 having an optional removable flap. Foster notes that it is desirable to have the option to allow ventilation for the animal, but also to completely cover and protect the animal from the outdoor environment. It would have been obvious to add a removable flap to cover Wood's opening 21 and further another ventilation panel in order to give the animal's owner the option to allow for ventilation or protect the animal from the outdoor environment.

7. Claims 16, 17, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood as applied to claims 14, 15, 25 and 26 above, and further in view of Widrich (US 6,338, 314).

Wood, as modified, discloses the claimed invention except a pad is not added to the housing. Widrich discloses a pet housing wherein a frame 40 is fitted with a fabric and a pillow top is supplied adding comfort and insulation for the pet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wood's device by adding a pillow top to the cover in order to provide additional comfort and insulation for the pet.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wood as applied to claim 1 above, and further in view of Ventura (US 6,098,218).

Wood discloses the claimed invention except a hole for staking purposes is not positively disclosed. Ventura discloses a structure in the same field of invention, i.e. flexible housings having a rigid framed structural support, and teaches a means for staking the housing to a support surface. Ventura's housing comprises a rigid upper frame 60, a base frame, an opening defined by flap 12, ventilation panel 19, and four removable legs 22. Ventura teaches the use of holes 16 in the cover to facilitate staking the structure to a support surface, thus creating a more stable housing. It is further noted that it is common practice, and well known in the art to stake lightweight tent structures to the ground in order to prevent movement caused by the wind. It would have been obvious to one having ordinary skill in the art to modify Wood's device by adding holes to the leg members 11 in order to create a means for staking the shelter to a supporting structure.

#### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new grounds of rejection.

#### ***Conclusion***

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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897.

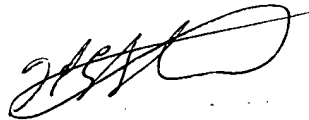
The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Behrend can be reached on 571-272-6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

A handwritten signature in black ink, appearing to be "J. A. A." followed by a large, stylized flourish.